ORIGINAL



UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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| MANUEL RAMOS, | : | CIVIL NO. 1:-CV-00-1957 |
| Plaintiff | : | (Judge Jones) |
| v. | : | (Magistrate Judge Smyser) |
| MARGARET HARDEN, DR. MCGLORI, DR. MAXIMO R. VELASCO, JR., , DR. ANTHONY BUSSANICH, and DR. PETER J. TERHAAR, | : | JURY TRIAL DEMANDED |
| Defendants | : | |

**DEFENDANT DR. PETER J. TERHAAR'S ANSWER WITH AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Peter J. Terhaar, M.D. hereby answers the Plaintiff's amended Complaint filed November 13, 2000, as follows, in accordance with Rule 8(b) of the Federal Rules of Civil Procedure:[1]

1. Paragraph 1 contains an introductory paragraph by Plaintiff to which no answer is required.

[1] Although Ramos has not set forth his amended Complaint in numbered paragraphs, Counsel for the Federal Defendants has assigned numbers to the amended Complaint. A copy of the numbered amended Complaint is attached hereto as exhibit "A" for the convenience of the Court and the parties.

2. Paragraph 2 contains conclusions of law to which no answer is required. To the extent that these legal conclusions are deemed to contain factual allegations, they are denied.

3. Paragraph 3 is DENIED.

4. Paragraph 4 is DENIED.

5. Paragraph 5 contains conclusions of law to which no answer is required. To the extent that these legal conclusions are deemed to contain factual allegations, they are denied.

6. Paragraph 6 contains Plaintiff's jury demand rather than an allegation of fact for which no answer is required.

7. Paragraph 7 contains conclusions of law to which no answer is required.

**Jurisdictional Statement**

8. Paragraph 8 contains conclusions of law to which no answer is required. To the extent that these legal conclusions are deemed to contain factual allegations, they are denied.

**Parties**

9. Paragraph 9 is DENIED.

10. Paragraph 10 is DENIED.

11. Paragraph 11 is DENIED.

12. Paragraph 12 is DENIED.

13. Paragraph 13 attempts to identify Defendant Terhaar and the capacity and basis upon which he was sued. Defendant Terhaar specifically denies all allegations of negligence in paragraph 13. Additionally, Defendant Terhaar was dismissed from this action on September 26, 2002. Therefore, no response is required.

**Statement of Issues Presented**

14. Paragraph 14 is DENIED.

15. Paragraph 15 is DENIED.

16. Paragraph 16 is DENIED.

17. Paragraph 17 is DENIED.

18. Paragraph 18 is DENIED.

19. Paragraph 19 is DENIED.

20. Paragraph 20 is DENIED.

21. Paragraph 21 is DENIED.

**Statement of Facts**

22. Paragraph 22 is ADMITTED to the extent Plaintiff was involved in an altercation with another inmate at FCI Allenwood on March 26, 1997, and was subdued by staff and handcuffed. The remainder of the paragraph is DENIED.

23. Paragraph 23 is DENIED.

24. Paragraph 24 contains allegations of fact against Defendant Migliorino, who was dismissed from this action on September 26, 2002. Therefore, no response is required.

25. Paragraph 25 is ADMITTED to the extent Plaintiff was transferred to USP Allenwood on May 21, 1997. The remainder of the paragraph is DENIED.

26. Paragraph 26 is DENIED.

27. Paragraph 27 is DENIED.

28. Paragraph 28 is ADMITTED to the extent Plaintiff was transferred to USP Lewisburg in November 1997, and that he complained of pain in his right thumb while at USP Lewisburg. The remainder of the paragraph is DENIED.

29. Paragraph 29 is DENIED.

30. Paragraph 30 is ADMITTED to the extent that Plaintiff was examined on February 9, 1998, after complaining of thumb pain and that an orthopedic consultation was ordered.

31. Paragraph 31 is ADMITTED to the extent that Plaintiff was seen in Health Services on February 22, 1998. The remainder of the paragraph is DENIED.

32. Paragraph 32 is ADMITTED to the extent that Plaintiff was seen by Dr. Terhaar, an orthopedic surgeon, on March 2, 1998 and Dr. Terhaar recommended surgical repair.

33. Paragraph 33 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

34. Paragraph 34 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

35. Paragraph 35 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

36. Paragraph 36 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

37. Paragraph 37 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

38. Paragraph 38 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

39. Paragraph 39 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

40. Paragraph 40 is ADMITTED.

41. Paragraph 41 is ADMITTED to the extent the Plaintiff was seen in Health Services at USP Lompoc on February 25, 1999. The remainder of the paragraph is DENIED.

42. Paragraph 42 is ADMITTED to the extent the Plaintiff was seen in Health Services at USP Lompoc on March 8, 1999. The remainder of the paragraph is DENIED.

43. Paragraph 43 is ADMITTED to the extent the Plaintiff was seen in Health Services at USP Lompoc on April 19, 1999. The remainder of the paragraph is DENIED.

44. Paragraph 44 is ADMITTED to the extent the Plaintiff was seen in Health Services at USP Lompoc on May 19, 1999. The remainder of the paragraph is denied.

45. Paragraph 45 is DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

46. Paragraph 46 is DENIED because after reasonable investigation, answering Defendant is without sufficient information to form a belief to the truth of the averment in paragraph 46 of the Plaintiff's Complaint.

47. Paragraph 47 is ADMITTED to the extent that Plaintiff was transferred from USP Lompoc.

48. DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

49. Paragraph 49 is DENIED because after reasonable investigation, answering Defendant is without sufficient information to form a belief to the truth of the averment in paragraph 49 of the Plaintiff's Complaint.

50. DENIED as stated. Plaintiff's medical records are in writing and thus speak for themselves.

51. Paragraph 51 is ADMITTED to the extent that Plaintiff was transferred from USMCFP Springfield back to USP Florence, Colorado, in June 2000.

52. Paragraph 52 is ADMITTED.

53. Paragraph 53 is ADMITTED to the extent that Plaintiff's civil case was transferred to the Middle District of Pennsylvania.

54. Paragraph 54 is ADMITTED.

55. Paragraph 55 is ADMITTED.

56. Paragraph 56 is DENIED.

57. Paragraph 57 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

58. Paragraph 58 is DENIED.

59. Paragraph 59 is ADMITTED to the extent that Plaintiff's hand was x-rayed in December 1997.

60. Paragraph 60 is ADMITTED to the extent Plaintiff underwent surgery on his right hand in January 1999. The remainder of the paragraph is DENIED.

61. Paragraph 61 is DENIED.

62. Paragraph 62 is DENIED.

63. Paragraph 63 is DENIED.

64. Paragraph 64 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

65. Paragraph 65 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

66. Paragraph 66 is DENIED.

67. Paragraph 67 is DENIED.

68. Paragraph 68 is DENIED.

69. Paragraph 69 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

70. Paragraph 70 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

71. Paragraph 71 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

72. Paragraph 72 is DENIED.

73. Paragraph 73 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

74. Paragraph 74 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

75. Paragraph 75 is DENIED.

76. Paragraph 76 is DENIED.

77. Paragraph 77 is ADMITTED to the extent Plaintiff underwent surgery in January 1999. The remainder of the paragraph is DENIED.

78. Paragraph 78 is DENIED.

79. Paragraph 79 is DENIED.

80. Paragraph 80 is ADMITTED to the extent Plaintiff claims he was injured in March 1997 and received x-rays in December 1997. The remainder of the paragraph is DENIED.

81. Paragraph 81 is ADMITTED to the extent Plaintiff underwent surgery in January 1999. The remainder of the paragraph is DENIED.

82. Paragraph 82 is DENIED.

83. Paragraph 83 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

84. Paragraph 84 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

85. Paragraph 85 is DENIED.

86. Paragraph 86 is DENIED to the extent the Plaintiff was in pain 'the whole duration" and suffered needlessly. The remainder of the paragraph is a conclusion of law to which no response is required. To the extent deemed factual, however, DENIED.

87. Paragraph 87 is DENIED.

88. Paragraph 88 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

89. Defendants are unable to admit or deny paragraph 89 as it contains a hypothetical.

90. Paragraph 90 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

91. Paragraph 91 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

92. Paragraph 92 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

93. Paragraph 93 is DENIED to the extent Plaintiff concludes the individual Defendants were deliberately indifferent to his injury. The remainder of the paragraphs contains conclusions of law to which no response is required.

94. Paragraph 94 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

95. Paragraph 95 is DENIED.

96. Paragraph 96 states conclusions of law that require no response; to the extent deemed factual, however, DENIED.

97. Paragraph 97 is DENIED.

98. Paragraph 98 contains Plaintiff's prayer for relief rather than an allegation of fact for which an answer is required.

99. Paragraph 99 contains Plaintiff's prayer for relief rather than an allegation of fact for which an answer is required.

100. Paragraph 100 contains Plaintiff's prayer for relief rather than an allegation of fact for which an answer is required. To the extent deemed factual, however, DENIED.

101. Paragraph 101 contains Plaintiff's prayer for relief rather than an allegation of fact for which an answer is required.

102. Paragraph 100 contains Plaintiff's prayer for relief rather than an allegation of fact for which an answer is required. To the extent deemed factual, however, DENIED.

## DEFENDANTS' AFFIRMATIVE DEFENSES

### First Defense

The injuries and damages alleged in the Complaint were proximately caused, if at all, by the fault or negligent acts or omissions of the Plaintiff.

### Second Defense

Plaintiff's damages, if any, are limited by 28 U.S.C. §§ 2674 and 2675(b).

### Third Defense

This action may be barred, in whole or in part, by the Statue of Limitations.

**Fourth Defense**

This action is barred, in whole or in part, due to the Plaintiff's failure to exhaust all available administrative remedies.

**Fifth Defense**

The amended Complaint, in whole or in part, fails to state a claim.

**Sixth Defense**

Defendant is entitled to qualified immunity.

Respectfully submitted,

BY: _____

PATRICK T. O'CONNELL, ESQUIRE
I.D. # 76539
106 West Front Street
Berwick, PA 18603
(570) 752-5915

Date: October 21, 2002

In The United States District Court
For The Middle District Of Pennsylvania
(Scranton)

Civil No. _____

Manuel Ramos,
Plaintiff,

V.

Margaret Harden, Warden F.C.I. Allenwood, PA; Dr. McGlori, Medical Doctor, FCI Allenwood; Maximo R. Velasco Jr., Medical Doctor, USP Lewisburg; Anthony Bussanich, Medical Doctor USP Lewisburg, PA; Peter J. Terhaar, D.O., Consulting Surgeon, Bloomsburg Hospital, Bloomsburg, PA.,
Defendants.

District of Columbia Civil Case No. 00-1655(RWR) Transferred To Pennsylvania By Order Of Court, September 18, 2000

Jury Trial Demanded

**Amended Memorandum Of Law In Support Of Civil Rights Complaint Under Biven's V. Six Unknown Agents, 403 US 388 (1971); Title 28 USC, §§ 1331, 1391(a)(b) and Federal Tort Claims Act, Title 28 USC, §§ 1346(b), 2671-80**

(1) **Comes Now**, Manuel Ramos, (hereinafter plaintiff) pro se, before the United States District Court, For The Middle District Of Pennsylvania, (Scranton), respectfully to submit the above captioned Amended Memorandum Of Law In Support Of Civil Rights Complaint and Federal Tort Claim.

(2) Brought against the above named defendants for previous and future violations of plaintiff's right to be free from cruel and unusual punishment secured by the Eighth Amendment of the Constitution, as well as for violating plaintiff's right to not be treated with deliberate indifference towards plaintiff's

serious medical needs by delaying treatment over many months for a broken right hand which caused the tendon to splay when it finally healed on its own.

(3) Brought against the above named defendants for the use of excessive unreasonable force by an officer which intentionally broke plaintiff's hand after he was subdued and handcuffed by pulling plaintiff's thumb until it broke.

(4) Brought against the above named defendants for failing to investigate this incident, turn over the officer's name involved in this incident, turn over the accident report on this incident, and for not recieving adequate medical care after this incident took place.

(5) These defendants were acting under color of federal law and their individual capacities.

(6) Pursuant to Fed.R.Civ.P., Rule 38(b), plaintiff demands the Court issue an Order for a jury trial on the meritorious issues presented herein.

(7) The allegations in this complaint are to be held in a less stringent standard than formal pleadings drafted by an attorney due to plaintiff's inexperience with the law, and inability to speak English; Haines V. Kerner, 404 US 519, 30 LEd 2d 652, 92 SCT 594 (1972).

## Jurisdictional Statement

(8) The basis for the Court's jurisdiction pursuant to Fed. R.Civ.P., Rule 8(a), is Title 28 USC, §1331 due to violations of the Eighth Amendment to the Constitution, and defendant's deliberate indifference towards plaintiff's serious medical needs as outlined above; Title 28 USC, §1391(a)(b) for damages and personal jurisdiction; Title 28 USC, §§1346(b), 2671-80, Federal Tort Claims Act.

Parties:

(9) 1.) Margaret Harden, Warden of F.C.I. Allenwood, PA.
She is a citizen of Pennsylvania
Address: P.O. Box 2000, White Deer, Pennsylvania 17887
The defendant, at the time this complaint arose was acting under color of federal law.
This defendant failed to investigate the negligent act of one of her employees, an officer, which broke plaintiff's right hand after the plaintiff was secured in handcuffs.
This defendant failed to turn over the officers name involved in this incident as well as the accident report on this incident and should be held liable; Williams V. Omodt, 640 F.Supp. 120, 123-24 (D. Minn. 1986).
This defendant failed to insure plaintiff recieved adequate medical care for his broken hand violating plaintiff's right to be free from cruel and unusual punishment.
She is responsible in her official and individual capacity.

(10) 2.) Doctor McGlori, Medical Doctor at F.C.I. Allenwood, PA.
He is a citizen of Pennsylvania
Address: P.O. Box 2000, White Deer, Pennsylvania 17887
The defendant at the time this complaint arose was acting under color of federal law.
This defendant is liable for deliberate indifference to plaintiff's serious medical needs. This defendant did not adequately treat plaintiff's broken hand. Did not complete the necessary xray needed to show plaintiff had an injured tendon. Did not insure plaintiff recieved the needed surgery of said tendon in time to prevent this tendon from becoming atrophied so plaintiff would not have needed the tendon graft surgery he eventually needed to have.
This defendant is responsible in his official and individual capacity.

(11) 3.) Maximo R. Velasco Jr., Medical Doctor at U.S.P. Lewisburg PA.
He is a citizen of Pennsylvania
Address: P.O. Box 1000, Lewisburg, PA 17837
The defendant, at the time this complaint arose was acting under color of federal law.
This defendant is liable for deliberate indifference to plaintiff's serious medical needs; (Same as above)
This defendant is responsible in his official and individual capacity.

(12) 4.) Anthony Bussanich, Medical Doctor at U.S.P. Lewisburg, PA.
He is a Citizen of Pennsylvania
Address: P.O. Box 1000, Lewisburg, PA 17837
The defendant, at the time this complaint arose was acting under color of federal law.
This defendant is liable for deliberate indifference to plaintiff's serious medical needs, knowing plaintiff had a broken right hand, splayed tendon, and chose to wait many months before correcting the injury. A surgery that turned out to be very unsuccessful, causing plaintiff to lose the normal use of his hand permenantly. Causing plaintiff to suffet in pain needlessly. Has caused plaintiff extreme mental and physical pain to the point of being fearful of being treated anymore by Bureau of Prisons doctors.
This defendant is responsible in his official and individual capacity.

(13) 5.) Peter J. Terhaar, D.O., Consulting Surgeon, Surgeon at Lewisburg, PA.
He is a citizen of Pennsylvania
Address: 549 E. Fair Street, Bloomsburg, PA 17815
The defendant, at the time this complaint arose was acting under color of federal and state law.
This defendant performed an experimental surgery on plaintiff's splayed tendon in his right hand.

This defendant did not inform plaintiff the surgery was an experimental surgery and was negligent in performing this surgery.

Plaintiff has lost the normal used of his right hand because of this malpractice, has permenant numbness, and is now fearful of all Bureau of Prison doctors because of this experimental surgery.

This defendant has shown deliberate indifference to plaintiff's serious medical needs by causing plaintiff great harm with his "monkey experiment," permenantly injuring plaintiff.

## Statement Of Issues Presented

(14) The defendants herein are responsible in their official and individual capacities for violating plaintiff's right to be free from cruel unusual punishment and deliberate indifference to plaintiff's serious medical needs.

(15) The officer in question, whom subdued plaintiff in the March 26, 1997 altercation with another inmate used unreasonable and excessive force by twisting plaintiff's thumb and breaking his thumb in doing so. Plaintiff was not struggling with the officer at the time.

(16) Though plaintiff complained to medical staff about severe pain, swelling, the defendants only prescribed Motrin then did not record plaintiff's many complaints about this injury in his medical records.

(17) The plaintiff complained of severe pain 20+ times in the

records and many more times off the record.

(18) Plaintiff did not recieve the needed surgery on a splayed tendon, (Caused by the broken hand) in his right thumb for over 20 months causing said tendon to atrophy, making it impossible to be re-attached.

(19) A radical experimental surgery was then done which to this date has done nothing to improve plaintiff's medical condition.

(20) The defendants deliberately transferred plaintiff to several different federal prisons in a short time to avoid giving plaintiff the proper medical care, i.e., surgery, physical therapy.

(21) Plaintiff has suffered many months of physical as well as mental anguish over this trauma and has been told he will have medical problems with his right hand for the rest of his life.

## Statement Of Facts

(22) March 26, 1997, while at F.C.I. Allenwood, Pennsylvania, plaintiff was involved in an altercation with another inmate and was subdued by an officer, (Name unknown) and handcuffed. The officer while handcuffing plaintiff twisted plaintiff's right thumb even though plaintiff was not struggling with him and severely injured plaintiff's thumb.

(23) For fifteen (15) days plaintiff complained of severe pain in his right hand and thumb only to be told to take massive doses of Motrin.

(24) Doctor McGlori, at F.C.I. Allenwood informed plaintiff he

would order an xray of his injured right hand.

(25) May 21, 1997, plaintiff was transferred from F.C.I. Allenwood to U.S.P. Allenwood and still not had the needed xray of his right hand. Again plaintiff was told to continue taking Motrin which plaintiff complained upset his stomach.

(26) August 8, 1997, plaintiff again complained of severe right thumb wrist and hand pain, refused to take anymore Motrin because of stomach pain and asked for something to be done. At this time a deformity was noted and again an xray was ordered.

(27) Plaintiff complained many times of being in pain from his hand only to be told to take Motrin. Everywhere in his medical records where Motrin was given reflects the times his hand complaints were not recorded.

(28) November 19, 1997, plaintiff was transferred from U.S.P. Allenwood to U.S.P. Lewisburg and continued to complain of right hand pain.

(29) December 4, 1997, complaint of right hand pain was noted and an xray was completed which showed a small avulsion fracture at the distal first metacarpal.

(30) February 9, 1998, plaintiff was again examined for severe right hand pain and was recommended to see the orthopedic consultant and surgical repair of the tendon was recommended.

(31) February 22, 1998, plaintiff complained of severe pain again.

(32) March 2, 1998, Consultation was confirmed by Dr. Velasco for surgical repair of tendon to the bone.

(33) March 3, 1998, plaintiff again complained of severe pain in his right hand, and thumb.

(34) July 21, 1998, plaintiff complained of right hand and thumb pain.

(35) January 7, 1999, plaintiff was finally taken to the Bloomsburg Hospital, Bloomsburg, PA, to have surgery performed by Peter J. Terhaar, D.O., for chronic gameskeeper's thumb, right upper extremity (Grade III), which was a reconstruction ulnar collateral ligament utilizing a **palmaris longus tendon graft** with suture anchors.

(36) January 17, 1999, plaintiff complained of severe pain in his right hand and wrist.

(37) January 18, 1999, plaintiff complained of severe pain in his right hand and wrist.

(38) January 20, 1999, plaintiff complained of severe pain in his right hand and wrist.

(39) February 5, 1999, plaintiff complained of severe pain in his right hand and wrist.

(40) February 22, 1999, plaintiff was transferred from U.S.P. Lewisburg, PA, to U.S.P. Lompoc, CA.

(41) February 25, 1999, plaintiff complained of severe pain in his right hand and wrist.

(42) March 8, 1999, plaintiff complained of severe pain in his right hand and wrist.

(43) 18 April 19, 1999, plaintiff complained of severe pain in his right hand and wrist.

(44) 19 May 19, 1999, plaintiff complained of severe pain in his right hand and wrist and was told by a consulting doctor (Name is unknown) that plaintiff had Carpal Tunnel Syndrome & Median Nerve Entrapment. This consultant informed plaintiff that if he had another surgery he would most likely have big problems with his hand from that point on. This consultant told plaintiff that the surgery already performed was an "experimental" surgery and should not have been done.

(45) 20 May 28, 1999, plaintiff again complained of severe right hand and wrist pain.

(46) 21 March 15, 1999, palintiff filed a Tort claim with the Northeast Regional Office ( Claim No. T-WXR-99-88) with a claim for monetary compensation for his injuries.

(47) 22 October 7, 1999, plaintiff was transferred from U.S.P. Lompoc, CA, to U.S.P. Florence, CO.

(48) 23 While at U.S.P. Florence plaintiff complained of severe right hand pain and was taken into Pueblo to see a consulting doctor, (Name unknown, plaintiff cannot get his medical records from the medical department at Florence) and this doctor again gave the diagnosis of Carpal Tunnel syndrome and recommended plaintiff have the surgery but plaintiff declined out of fear.

(49) January 7, 2000, Henry J. Sadowski, Regional Counsel for the

Northeast Regional Office denied plaintiff relief under his Tort claim.

(50) May 23, 2000, U.S.P. Transferred plaintiff to the Medical Center for Federal Prisoners, Springfield, MO, wherein plaintiff was again examined by the doctors and found to have the above medical diagnosis of Carpal Tunnel Syndrome and Median Nerve Entrapment. Plaintiff declined to have another surgery out of fear from the past experimental surgery performed on him.

(51) June 15, 2000, plaintiff was returned to U.S.P. Florence, CO, for refusing the surgery at Springfield, MO. where he remains.

(52) June 19, 2000. plaintiff filed his initial Civil Rights Complaint (U.S. District Court, For The District Of Columbia, Case No. 00-1655(RWR)) which was filed in the wrong venue.

(53) September 20, 2000, the U.S. District Court For The District Of Columbia filed a Memorandum and Transfer Order ordering transfer of plaintiff's complaint to the appropriate District Court For The Middle District Of Pennsylvania. In the Court's Order the Court never specified which Court in Pennsylvania the case would be transferred to.

(54) October 19, 2000, plaintiff filed a Motion For Extention Of Time To Amend Civil Rights Complaint, was unsure which Court in Pennsylvania to file this motion and filed the motion in the Middle District Of Pennsylvania, Williamsport, Pennsylvania, with instructions to the Clerk to please transfer the motion

to the appropriate Court if that was not the Court for it to be filed in.

(55) October 20, 2000, plaintiff recieved a letter from the Clerk for the United States District Court, District Of Columbia, addressed to the Clerk for the United States District Court For The Middle District Of Pennsylvania, P.O. Box 1148, Scranton, Pennsylvania, 18501, informing the Clerk of the transfer to that Court of plaintiff's Civil Right's Complaint.

## Claims For Relief

(56) Plaintiff was injured by a Correctional Officer using unreasonable and excessive force causing trauma to plaintiff's right thumb and hand. Before this injury plaintiff did not ever have these problems with his hand.

(57) Pursuant to Title 18, USC, §4042, the duty of the Bureau of Prisons under federal law is to:

> (2) provide suitable quarters and provide for the **safekeeping, care**, and subsistence of **all persons** charged with or convicted of offenses against the United States, or held as witnesses or otherwise; (3) provide for the **protection,** instruction, and discipline of **all** persons charged or convicted of offenses against the United States.

(58) This officer (Whom plaintiff cannot get his name) was negligent in performing his duty by maliciously and sadistically using force to break plaintiff's hand after he was cuffed and subdued at the end of an altercation with another

inmate. This officer as well as the Warden should be liable for the injuries sustained by plaintiff.

(59) From March 26, 1997, it took until December, 1997 before plaintiff could get an xray of his hand which showed the hand was broken.

(60) From March 26, 1997, it took until January 7, 1999 before plaintiff recieved the needed tendon repair to his right hand. If plaintiff would have recieved the proper medical care he is entitled to the tendon would have been repaired much sooner preventing the tendon from atrophing so plaintiff would not have needed the extensive tendon graft done in the surgery. This amounts to a deliberate indifference to plaintiff's serious medical needs by the defendants supporting plaintiff's claim of cruel and unusual punishment secured by the Eighth Amendment of the Constitution.

(61) Plaintiff complained many times on the record as well as off the record over many months about his injury before the medical staff took the necessary action. The medical staff only told plaintiff to take massive doses of Motrin instead of giving plaintiff the correct treatment which should have been surgery immediately after the injury occurred to prevent the tendon from atrophying. The course of treatment chosen has left plaintiff permenantly disabled. Plaintiff has been told he will have problems with his hand for the rest of his life.

(62) The foregoing substantially shows the defendants deliberate indifference towards plaintiff's medical needs and constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.

(63) The defendants intentional delay in a confirmed diagnosis of many months before plaintiff could recieve the needed tendon surgery constitutes an Eighth Amendment violation for grossly inadequate medical care.

## Issue No. 1

### Additional Argument To Original Complaint Excessive Physical Force By Staff

(64) **Discussion:**

As stated above the duty of the Bureau of Prisons under federal law is to:

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise; (3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States; Title 18 USC, §4042.

(65) Violations of this duty are actionable under the Federal Tort Claims Act; United States V. Muniz, 374 US 150, 165, 83 SCT 1850 (1963); Guy V. United States, 492 F. Supp. 571 (N.D.

Cal. 1980).

(66) The officer in question used excessive force against plaintiff which was not justified by any legitimate prison management need, and was completely out of proportion to that need; Hudson V. McMillian, 503 US 1, 112 SCT 995, 998-99 (1992).

(67) Plaintiff was handcuffed when the officer in question broke plaintiff's thumb maliciously and sadistically using force to cause harm to plaintiff and in a case such as plaintiff's the contemporary standards of decency always are violated; supra., Hudson V. McMillian, 503 US, at 1000.

(68) By using excessive force the officer violated plaintiff's right to be free from cruel and unusual punishment. On Court found an Eight Amendment violation where "the Officers acted, if not 'maliciously and sadistically', with at least a viciousness going beyond' a good faith effort to maintain or restore discipline; Fisher V. Koehler, 692 F. Supp. 1519, 1563 (S.D. N.Y. 1988), aff'd 902 F2d 2 (2nd Cir. 1990).

(69) Every person, including an incarcerated felon, has the right to be free from the fear of offensive bodily contact and to be free from actual offensive bodily contact. Any person who violates either of these rights can be held liable, both civilly and criminally.

(70) The officer in question was reckless in how he treated plaintiff which constitutes an Eighth Amendment violation for the officer knew and disregarded an excessive risk to plaintiff's health and safety when he intentionally broke plaintiff's hand; Farmer V. Brennan, _____ US _____, 114 SCT 1970, 1977 (94) at 1979.

(71) The primary question for Courts to answer is "whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm;" Hudson V. McMillian, at 998; Whitley V. Albers, 475 US 312, 320-21, 106 SCT 1078 (86); Howard V. Barnett, 21 F3d 868, 872 (8th Cir. 1994); Cummings V. Malone, 995 F2d 817, 822 (8th Cir. 1993); Romano V. Howarth, 998 F2d 101, 106 (2nd Cir. 1993). The fact that the officer in question intentionally twisted and pulled on plaintiff's thumb establishes an unnecessary and wanton infliction of cruel and unusally punishment.

(72) The officer in question could very well be found liable for this injury when presented to a jury and the failure of the warden to investigate this officers conduct or to give plaintiff the officers name also makes the warden directly responsible for this injury.

(73) Plaintiff states his Federal Tort Claim and this Biven's Action are separate remedies under the federal law, but can be joined in the same lawsuit; Henderson V. Harris, 672 F.Supp. 1054, 1063 (N.D. Ill. 1987); Carlson V. Green, 446 US 14, 22-23, 100 SCT 1468 (1980).

Issue No.2

(74) Deliberate Indifference To Serious Medical Need

Discussion:

In order for a plaintiff to support a claim of deliberate indifference towards his serious medical needs he must show three (3) components established in Estelle V. Gamble, 429, US 97, 104, 97 SCT 285, 50 L.Ed.2d 251 (1976) that were further clarified by the Supreme Court in Farmer V. Brennan, 551 US 825, 114 SCT 1970, 128 L.Ed.2d 811 (1994) and are (1) subjective knowledge of arisk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence.

(75) 1). Subjective Knowledge of a Risk of Serious Harm, exists in the present case before the Court. plaintiff was injured by the officer in March 1997, and complained about his hand injury many times only to be told to take massive doses of Motrin. The defendants did not complete the ordered X-Ray of plaintiff's injury until December 1997, so plaintiff was left to suffer

needlessly without the proper care for this injury for many months before the diagnosis for a splayed tendon was made. In the interin the tendon that should have been repaired soon after plaintiff's injury had atrophied to the point it could no longer be re-attached properly requiring the graft surgery plaintiff had undergone.

(76) The defendant's as professional medical personnel knew or should have known the risks associated with serious injuries as plaintiff incurred and did not complete the diagnostic testing required for such an injury.

(77) It is further shown in the records that plaintiff did not have the surgery to repair his torn and spalyed tendon until January 7, 1999 almost two (2) years after the injury occurred further causing a great possibility of permenant damage to plaintiff's nerve functions associated with such an injury.

(78) Plaintiff did complain about severe pain and numbness many times in the record as well as many times off the record without receiving the adequate medical care.

(79) 2.) **Disregard of that Risk;** exists in this case and is shown in the medical records in delaying plaintiff's needed surgery to repair his splayed tendon knowing he needed something to be done.

(80) 3). By conduct that is More than Mere Negligence. The defendant's were made well aware that plaintiff sustained a serious injury in March, 1997 and ordered the needed X-ray of his hand but failed to do the X-ray until December, 1997.

(81) Plaintiff did not have his tendon repaired until January, 1999 and by this time the tendon in question was atrophied beyond re-attachment. Plaintiff then had to have the surgical graft done which failed to correct plaintiff's injury, only causing further problems.

(82) This conduct by the defendant's was not mere negligence, but constituted grossly inadequate care. The defendants refusal to treat plaintiff for such a long period of time and the choice made, i.e., graft surgery, shows a substantial deliberate indifference towards the care and safety of plaintiff's medical health; See McElligott V. Foley, 182 F3d 1248 (11th Cir. 1999), at 1254-55.

Issue No.3

(83) Cruel and Unusual Punishment Standard Eighth Amendment

Discussion:

In the case McElligot, at 1257, the Eleventh Circuit held:

" A core principle of eighth American jurisprudence in the area of medical care is that prison officals with knowledge of the need for care may not, by failing to provide care,

> cause a prisoner to needlessly suffer the pain resulting from his or her illness."

and,

(84) "In Estelle, the Supreme Court recognized that the Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration" precisely because the failure to do so," may actually produce physical 'torture or a lingering death'" or, [i]n less serious cases ... may result in pain and suffering which no one suggests would serve any penological purpose." The Court cited; Estelle, 429 US, at 103, 97 SCT 285 (Quoting In re Kemmler, 136 US 436, 447, 10 SCT 930, 34 L.Ed. 519 (1890)).

(85) Plaintiff has shown by facts in the record that the defendants were deliberately indifferent towards plaintiff's medical needs. The plaintiff had a broken hand and a torn tendon of which plaintiff could not receive treatment for twenty (20) months or more. A torn tendon that was eventually

surgically repaired with a graft due to the fact the tendon torn had atrophied over such a long period of time.

(86) The plaintiff was in pain the whole duration and suffered needlessly. This was a serious medical need and the fact that certain care has been labelled "elective" does not necessarily mean that your need for is not serious; Monmouth County Correction Institution Inmates V. Lanzaro, 834 F2d 326, 349 (3rd Cir. 1987) cert.den., 486 US 1066 (1988).

(87) These prison officials violated the Eighth Amendment by allowing plaintiff to suffer for a great length of time and delaying his treatment. For this delay plaintiff will now have problems with his hand for the rest of his life. This deliberate indifference and delay renders the defendants liable as if they had inflicted the pain themselves; Brown V. Hughes, 894 F2d 1533 (11th Cir. 1990).

(88) In Langley V. Coughlin, 888 F2d 252, 254 (2nd Cir. 1989), the Court held:

> "Officials must provide reasonably necessary medical care ... which would be available to (the prisoner) if not incarcerated." Courts have defined "adequate medical services" as "services at a level reasonably

> commensurate with modern medical science and of a quality acceptable within prudent professional standards."

(89) The foregoing facts and arguments show an Eighth Amendment violation of cruel and unusual punishment. Plaintiff would have received the needed tendon repair surgery, if he was in the private sector, many months sooner. In the private sector plaintiff would have had the X-ray completed most likely the same day of the injury and this would have shown the splayed tendon as well as the broken bone.

(90) In McGuckin V. Smith, 974 F2d 1050 (9th Cir. 1992), at 1059, the Court held:

> "The [u]nnecessary and wanton infliction of pain upon incarcerated individuals under color of law constitutes a violation of the Eighth Amendment and is actionable under 42 USC, § 1983." Such indifference may be manifested in two ways. It may appear when prison officials deny, delay, or intentionally interfere with medical treatment. or it may be shown by the way in which prison physicians provide medical care; Hudson V. McMillian, supra; at 394.

(91) The Court in supra, McGuckin at 1059-60 went on to hold:

> "An individuals daily activities, or the existence of chronic and substantial pain are examples of indications that a prisoner has a "serious need for medical treatment." (citations omitted)

(92) Other cases for the Court to review are; Boretti V. Wiscomb, 930 F2d 1150, 1154-55 (6th Cir. 1991); Farinaro V. Coughlin, 642 F.Supp. 276, 279 (S.D.N.Y. 1986); Washington V. Dugger, 860 F2d 1018, 1021 (11th Cir. 1978).

(93) The defendants knew, or should of known plaintiff had a serious injury and delayed diagnosis as well as treatment for months, not days but months. A clear case of deliberate indifference leading to cruel and unusual punishment; Hathaway V. Coughlin, 37 F3d 63, 67 (2nd Cir. 1994), so clearly inadequate as to amount to a refusal to provide essential care; Torraco V. Maloney, 923 F2d 231 (1st. Cir. (1991), offending the evolving standards of decency that mark the progress of a maturing society; Estelle V. Gamble, 429 US 97, 102, 106, 97 SCT 285, 290, 292, 50 L.Ed.2d 251 (1976).

## Qualified Immunity & Defendants

(94) It is clear the above defendants are not entitled to qualified immunity. As the Supreme Court has explained, qualified immunity seeks to ensure that defendants reasonably can anticipate when their conduct may give rise to liability, by attaching liability only if the contours of the right's violated are sufficiently clear that a reasonable official would understand that what he is doing or not doing violates that right; **Conn V. Gabbert**, _____ US _____, _____, 119 SCT 1292, 1295, 143 L.Ed.2d 399 (1999), at 1295 (Quoting **Harlow V. Fitzgerald**, 457 US 800, 818, 102 SCT 2727, 73 L.Ed.2d 396 (1982). This is not to say that an official action is protected by qualified immunity unless the very action in question has been held unlawful; but it is to say that in the light of preexisting law the unlawfulness must be apparent as in the case now at bar; **Anderson V. Creighton**, 483 US 635, 640, 107 SCT 3034, 97 L.Ed.2d 523 (1987).

(95) There is sufficient evidence for a jury to conclude that all of the defendants were delibertately indifferent to plaintiff's serious medical needs and substantial suffering over many months. The defendants had fair warning that their conduct violated the Eighth Amendment cruel and unusual punishment clause of the Constitution. Plaintiff has a clearly

established right to adequate medical treatment and prison officials who deliberately ignore the serious medical needs of inmates cannot claim that it was not apparent to a reasonable person that such actions violated the law; **Hamilton V. Endell**, 981 F2d 1062, 1066 (9th Cir. 1992).

(96) Federal Court complains generally need only give "fair notice" of what the plaintiff's claim is and the grounds upon which it rests; **Lawler V. Marshal**, 898 F2d 1196, 1199 (6th Cir. 1990); accord, **Brownlee V. Conine**, 957 F2d 353, 354 (7th Cir. 1992).

## Demand For Judgement

Wherefore:

(97) The foregoing establishes defendnats violated clearly established rights to medical treatment with unreasonable delay constituting deliberate indifference to said medical treatment, excessive force by an officer wherein plaintiff suffered permenant damage from the incident, violating plaintiff's right to be free from cruel and unusual punishment. Plaintiff demands relief in the following:

(98) Plaintiff moves this honorable Court to grant him trial by jury on the above violation of law and grant him actual or nominal damages to be determined by said jury for his out of pocket expenses as well as for mental and physical suffering to begin at five million ($5,000,000) dollars.

(99) Plaintiff moves the Court to grant him punitive damages from each of the defendants, to be determined by a jury or five million dollars ($5,000,000) per each defendant for: their wrongful acts were/are done intentionally, and maliciously.

**Injunctive Relief**

(100) An Order for the Bureau of Prisons to refrain from retaliation for the filing of this Civil Rights Complaint, and prevent the Bureau of Prisons from transferring plaintiff on deisel therapy for filing said complaint.

(101) Plaintiff requests the Court order an Expansion of the Record to include the following additional materials:

(1) Complete copies of all Medical Records in plaintiff's files.

(2) The employment history records of all individually named defendants to include disciplinary actions taken against defendants.

(3) Any and all new discovery produced by the defendants, and, or, their attorneys.

**In Conclusion**

(102) Wherefore,

Plaintiff has established rights violated by

defendants were violated intentionally and maliciously, and prays the Court grant releif as requested and set a trial date before a jury.

Dated this 6 day of NOVEMBER, 2000.

Respectfully Submitted,

M. RAMOS

Manuel Ramos, pro se.
Register Number 37563-053
U.S. Penitentiary
P.O. Box 7000
Florence, CO 81226

## Affidavit In Support Of Civil Rights Complaint

Pursuant to Title 28 USC, § 1746, the affiant, Manual Ramos, swears under penalty of perjury that the facts stated in the foregoing civil rights complaint are true based on his personal knowledge, and that the facts stated on information and belief are true to the best of his knowledge and belief.

Dated this 6 day of NOVEMBER, 2000.

M. RAMOS

Manuel Ramos, pro se.

## Certificate of Service

I, Manuel Ramos, hereby certify that I have served 7 true and correct copies of the foregoing Civil Rights Complaint and supporting motions upon the defendants, and or their attorney of record, i.e., Clerk of the Court to be served upon the defendants, (U.S. Attorney), by placing same in a sealed, postage prepaid envelope addressed to:

United States District Court
Clerk's Office
Middle District of Pennsylvania
P.O. Box 1148
Scranton, PA 18501

and deposited same in the U.S. Postal Mail at U.S.P. Florence, P.O. Box 7000, Florence, CO., 81226 on this 6 day of NOVEMBER, 2000.

M. RAMOS
Manuel Ramos, pro se.